PRICE MAINTENANCE

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I shall confine my discussion of the topic assigned for this meeting to the practice among manufacturers of prescribing the price at which their products shall be sold by retail dealers. Attempts have also been made to fix in similar ways the prices at which wholesalers (jobbers) shall sell to the retailers. But stipulations of this latter kind are more easily evaded than those binding the retailers; and they seem to be less frequent. In any case they present essentially the same questions of principle, and hence call for no separate discussion. And it is the endeavor to fix retail price that chiefly arouses the concern of the community and is supposed to call for legislation.

Obviously the questions hereby presented are different from those of the trust problem. It is not a combination of manufacturers or of middlemen that we have to consider, or an agreement by a group among them to fix the prices at which they shall sell an article or set of articles. Each manufacturer is supposed to deal independently with his customers, merely fixing the prices at which they in turn shall sell. He continues to compete with other manufacturers producing the same thing or similar things. If the prescription of the prices at which the retailers shall sell has any effect on the amount received by the manufacturer or on his profits, this is an indirect and perhaps incidental consequence, quite different from the direct effect which would come from raising or stiffening through combination the prices obtained from the wholesalers or retailers. If there is restraint of trade in the legal sense, the restraint is of a different sort from that of the ordinary contract or combination. If there are consequences which the economist finds objectionable, they are different from those wrought by the trusts.

We may begin by endeavoring to analyze and understand the phenomenon, to see how it comes about. In this task of analysis, we shall follow two distinct lines of explanation. The first of these relates to the variations of demand and the structure of demand schedules,—topics with which economic theory is accustomed to deal. The second relates to the working in practice of the traditional machinery of distribution through middlemen. The first we may call *psychological;* the second we may call *marketing.*

First, then, as to demand schedules and their bearing on the problem in hand. This endeavor to prevent retailers from pushing their sales is anomalous. It seems to run counter to general propositions which are universally accepted in economic theorizing. If there is one thing which is laid down in all the books, it is that a decline in price leads to an increase in the quantity demanded and sold. The demand schedule, we are taught, always shows an increase of demand with a lowering of price. Yet the endeavor to keep up retail prices would seem to be based on a contrary supposition. Let me explain. In all this price-fixing system, the price received by the manufacturer himself is in no way restricted or even directly affected. His own price to the trade remains no less and no more. It is only the *re*sale price that is sought to be controlled. Now, the manufacturer's immediate interest, and indeed his only interest, would seem to be in his own receipts. So long as he settles the price which comes to him, why should he concern himself with the terms of further sale by jobber or retailer? Nay, his interest would seem to be that these middlemen, and especially the retailers, should sell as cheaply as possible, and advertise as much as possible their cheap sales. The decline in retail price leads to increase in the quantity sold,—this is our familiar theorem. So far as the manufacturer himself is concerned, there is no decline in price; he sells to the trade at his own price,—a price more or less established, and independent of retail dickering. If the shopkeepers push the sales of his wares, stimulate demand by cutting down the "spread" between his price and the price to consumers, why should not he, as well as the consumers, accept the situation with satisfaction? Ordinarily, it need not be said, this *is* the manufacturer's attitude. He sells to the trade at whatever prices he can get, and does not trouble himself about the further proceedings of jobbers and retailers.

It will be replied at once that the manufacturers whose case is here under consideration are *not* engaged in the ordinary ways of production and sale. They turn out articles not of the usual sort, but "identified" articles; things which are earmarked by brand, trade-mark, patent, distinctive name; almost always things which have been widely advertised. The articles are of the most various kinds,—watches and safety-razors, garters and shoes and underwear, whiskies and "proprietary" drugs, books and typewriters,—but all "identified." The number and the proportion of articles thus earmarked seem to be increasing; apparently the drift is to-

ward merchandising in this way. Now, as regards the identified articles, the maker's attitude is different from that of the ordinary manufacturer. The retailer is to be restrained from trying to stimulate their sales by reducing the retail profit and the retail price. The question recurs, why should the manufacturer wish to restrain him?

The answer,—not the whole of the answer, but so much as relates to the psychology of demand,—is to be found in the fact that the demand schedule does not follow the usual course, or at all events may not follow it. There is at least the possibility of an exception to the supposedly universal law. It is *not* universally true that a decline in the price of a commodity leads to the buying of more of it. The experienced business man's perception of this fact goes far to explain his aversion to retailer's price cutting. He does not formulate the matter in the terms which we economists use, and indeed does not often formulate it in any explicit way; but he knows that there is trouble here.

The typical case, and for the present purpose the instructive case, in which lowered price does not lead to increased demand, is that of articles of prestige. If diamonds were to become very plentiful and very cheap, it is probable that people would buy not more of them than now, but less. The brilliant stones would no longer gratify the love of ostentation, the emulative disposition; they would no longer suggest a handsome income or yield that inner satisfaction which comes, by association of ideas, from the possession of the rare and the precious. Their value would rest mainly on their usefulness in the arts, and would be kept within narrow limits by the competition of substitutes. The owners of the South African mines understood the situation perfectly. If diamonds were to retain their glamor and price, they could not be allowed to become too plentiful.

Now I am convinced that this factor plays a part in the business policy of prescribing retail prices. As a rule—not universally, but as a rule—the identified goods are widely advertised as exceptionally good. The advertising phrases sometimes used are such as to countenance the more pessimistic views on the lack of social gain from "publicity." The identified goods are said to be "quality articles"; they are for the *good* trade; they are for particular people; a little higher in price, but oh, how superior; and so on. If articles thus lauded are offered at cut prices, if they are knocking about in quantities on the counters of cheap shops at less

than the announced price, if they are used as "leaders" to seduce the bargain hunters,—their prestige is endangered. They may cease to be esteemed as quality goods. It is not an uncommon experience, I have been told (and some curious examples have been brought to my attention), that a manufacturer who has tried in vain to force sales of a product by lowering its price has found that by advertising lavishly under a fetching label he can sell more of that same product at a *higher* price. The converse is feared in case of a cut price for an "established" article. Though some additional purchasers may be tempted at the outset, prestige is impaired. The nimbus may be dissipated; particular people may no longer be attracted. Therefore the retail dealer is to be restrained from cutting the price. In the long run, the lower price, so far from enlisting purchasers, is as likely to repel them.

So much for the explanation on psychological grounds. I have no doubt it goes a good way toward clarifying the apparent anomalies in the manufacturer's attitude. But obviously it is of varying significance for different sorts of goods; and it is applicable in any case only to those for which prestige value is significant,—some articles of dress and food, for example. A great range of identified goods would seem to be beyond its scope. Such, to give a clear instance, are books; yet publishers are as solicitous as any price maintainers that their list rates should be maintained. On the whole, this factor seems to be less important than the other to which I have referred,—that arising in the conditions of marketing. To this second element in the case I will now turn.

The established mechanism for getting goods from the large-scale producer to the scattered individual purchasers is through the jobbers and the retailers. Now most of these do not relish cutting. They like to carry on business in the accustomed way, to sell at a "reasonable" profit, to maintain the traditional spread between manufacturer's price and wholesale price and then that between wholesale and retail price. They believe sincerely that the traditional rates of profit,—that is, the margins between buying prices and selling prices,—are not excessive, and that in the long run merchandising can not be conducted on lower terms. Variations from the established system they believe to be necessarily temporary and irregular,—disturbances from which a reaction is bound to set in, or mere devices to confuse and deceive the customers. The system of price prescription for identified goods conforms to these traditions. The retail price becomes the starting

point; with this the retailer makes his reasonable profit; the wholesaler in turn makes his reasonable profit, over and above the manufacturer's price; the manufacturer finally gets what remains, his own gross receipt; and all pursue their ways in calm and content.

Then comes some iconoclastic price-cutter,—a department store, or a mail-order house, or a "cheap trade" low-class retailer,—and parades a cut-price. The device is the more effective in attracting customers to him, at least in the first stages, in proportion as the article and its standard price (fixed price) are well known. Once the process of cutting is begun, difficulty arises in maintaining the standard price anywhere on the line. Quite apart from any loss of prestige for the article, buyers now expect the price to be cut generally. The shop that refuses to yield begins to be thought of as a dear shop. The retailer complains to the jobber that he can no longer hold the standard price, and asks the jobber to shade the jobbing price; the jobber in turn complains to the manufacturer, and asks him to shade *his* price.

Now it is all very well for the manufacturer who is thus pestered to say that the troubles of jobbers and retailers are their own, and that they must settle their conditions of competition for themselves. He finds that his goods are in danger of becoming unpopular in the trade. It no longer "pays" to handle them; there is "no money" in them. They are not boycotted; but they are no longer pushed. Salesmen are not coached to press them on the attention of jobbers, and retailers do not place them conspicuously on their counters. Other competing articles are favored, usually because they can be bought at lower prices. The once-favored manufacturer finds that the *accessibility* of his product is seriously affected. It is open to him, of course, to maintain the repute and the vendibility of his product by continued and even increased advertising. He may maintain its accessibility by alliance with some unorthodox selling agent, or even by setting up a new distributing system, e.g., by doing his own jobbing or retailing. But these measures call for an extended range of additional operations, for large capital, for new responsibilities of management. Though they are not impracticable, they are difficult and expensive. The simplest and easiest policy is to conform to the existing system, subdue the rebellious retailer, and make it worth while for the regular forces to remain loyal. Support the brand, support the price, support the trade,—this is good business.

Such are the grounds, so far as I can make them out, for the

great concern of this knot of manufacturers about a matter which seems at first to be none of their concern,—the price at which somebody else sells a product for which they have already received a price satisfactory to themselves. The next question is whether there are reasons for justifying or condemning the practice. Having explained the phenomenon—the first business of the economist, and doubtless his main business—we may consider whether it conduces to the public well-being. Is it to be encouraged by legislation, or to be checked?

On those aspects of the case which are connected with advertising and prestige,—the psychological aspects, as I have styled them,—the chief consideration which is urged in defense of the set-price system is that it enables or promotes the maintenance of the quality of the goods. It is said that the maker of the identified article, being assured of the price at which it will be sold at retail and therefore at wholesale, can maintain its quality; that there is a constant and insinuating pressure to lower the quality of goods, to pare down and adulterate; that the consumer is easily deceived into taking competing articles of "no real merit"; and that the system of fixed prices for identified goods serves as protection to the consumer, a guarantee of good quality.

No observer of the existing system will deny that the matter of maintaining quality is a serious one. There is a constant tendency to nibble. Shoddy goods and adulterated goods are a great bane of modern industry. The jobber and the retailer press the manufacturer to lower his price, and play off one manufacturer against another. There are dealers who persistently suggest a shading of quality here and there, a bit of poorer material, a cheap ingredient, and all with the same fair externals,—no one would notice the difference. It is not unnatural that the manufacturer who is conscientious and also far-sighted should set his face against moves of this kind, and should approve a system which promises to assure him his price and enable him to stick to his standards.

Nevertheless I question whether the system of price maintenance serves in any considerable degree to keep up the quality of goods; and I question still more whether it is the best way of keeping it up.

So far as I can judge from observation and inquiry (my own inquiry can not pretend to be more than cursory), these identified and price-fixed articles are sometimes excellent, sometimes good, sometimes ordinary. The verdict of unbiased and well-informed

observers seems to be that they are usually good; occasionally of really superior quality. As a rule, the purchaser is safe in buying them; but often he pays a liberal price for the insurance. Substitutes as good, but less widely advertised, can commonly be had at a price no higher, sometimes at a lower price. Not infrequently, the situation is the reverse of that implied in the quality argument: the much-advertised identified article with its set price, so far from being particularly good, is mediocre. There seems to be no uniformity in the outcome, and certainly no assured protection for the purchaser.

The whole question of the maintenance of the quality of goods is a perplexing one. How far is it expedient to let the purchaser judge for himself, how far expedient to hedge him in with safeguards and restrictions? In the process of experimenting with different goods and suiting different tastes, of adaptation to different needs, is it not best to let him buy what he likes and to take his chances of making mistakes? As regards some things important for health, drugs for example, or fresh milk, no one questions the desirability and the feasibility of setting up rigid standards and of compelling absolute conformity to them. As regards articles of food, we can require that they shall be what they purport to be,—that chicory shall not be palmed off as coffee or margarine as butter. But as regards a multitude of goods, probably the great mass, there can be no hard and fast standards. How much jute and how much cotton and how much wool should there be in a carpet? What flavor and composition should a tooth-paste have? Just how durable should be the leather in a shoe? How accurate a time-piece should a watch be? There are matters on which it would seem that the purchaser must be left in the main to judge for himself,—to compare price with quality, to consider for what sort of use and for what period of use he wishes the article. Neither an all-regulating government nor a benevolently disposed manufacturer is likely to settle them as much to his satisfaction,—his real and ultimate satisfaction, including that of having his own way,—as his own free choice, foolish though it may seem to another. In the course of the discussions of the set-price system, there have been on this subject some curious statements or implications. It has been said on the one hand that the retail dealer is the proper or responsible guardian for the purchaser; on the other that the maker of the identified article should act *in loco parentis*. The alternative, it would seem, should be put differ-

ently: either the public itself, i.e., the government, should intervene as guardian, or the purchaser should be left to take care of himself.

The argument concerning the ways of maintaining good quality seems to me applicable, not to price fixing, but to another practice usually allied with it and often confused with it,—namely, the protection of brands and trade-marks. The solid ground for legal support to trade-marks is that an inducement is thereby given to make satisfactory articles and to continue making them. Turn out that which satisfies the customer, mark it for easy identification, and he will ask for it again; a process which is defeated, as regards the inducement to maintain quality, if some one else is allowed to use the trade-mark. And it is this general situation—that it pays to make a trade-mark article good and to keep it good—which is *the* factor making for the quality of identified articles. The maintenance of retail prices seems not at all essential. There are any number of articles which have been sold under a trade-mark year after year, generation after generation, without any dictation of retail prices and also without any deterioration in quality. I take it that the trade-mark articles for which no set-price arrangement has been attempted far exceed in number and in commercial importance those to which it has been applied. It is a minority even among the identified goods which come within the purview of the system. Yet the long-run profitableness of keeping up the brand suffices for the maintenance of quality.

On one phase of the trade-mark situation and its relation to quality there may be room for improvement. The practice seems to have been extended of late years. Any one can register a trade-mark and try to "develop" it. Many a jobber bethinks himself of having his special brand; sometimes even the ambitious retailer. There may be herein a dispersion and loss of responsibility, and so of the inducement for maintenance of quality. The merchant's business is by its very nature one from which it is comparatively easy to withdraw. The manufacturer, on the other hand, is committed to large investment in plant. On general principles the trade-mark system might be expected to work out its best results if its use were limited to those who really made the goods and felt the sobering influence of heavy permanent investment. The manufacturer who puts on his goods any and every kind of trade-mark which a jobber may ask, will scamp the goods as much as that jobber directs; while the latter, easily able to withdraw from arrangements that he finds unprofitable, feels no such responsibility

and no such inducement as he would if he had to "stand by" the goods for a definite period. I would not undertake to dogmatize on this matter. Some jobber's brands have been long maintained, and have proved themselves trustworthy certificates of good quality. Others have been worthless to the consumers and demoralizing to the trade. The problem would seem a fit one for systematic inquiry by such a body as the Department of Commerce or the Federal Trade Commission. I refer to it only by way of illustrating the relation between trade-marks and quality of goods, and the way in which the public has a real concern in the process of having goods "identified."

What now is the public interest as regards the other side of the situation as we have analyzed it,—the marketing side? The manufacturer, to repeat, is under strong pressure to accept and even to sustain the existing system of distributing goods. He finds it good business policy to coöperate with jobbers and retailers by maintaining their traditional margins of profit. Is there any reason why he should or should not be allowed to do so?

On this score it is often argued that the cutting of prices by retailers is deceitful or fraudulent. The customer, we are told, does not really gain. The identified and well-known articles are used as "leaders,"—mere bait to lure the purchaser. The price cutter makes up for the low prices of these by higher prices on others, whose quality or "fair" price is not readily ascertainable. The ordinary purchaser, we are told, is a most gullible person; the shopkeeper can turn him about very much as he pleases; it is said to be to his permanent interest that the shopkeeper should be held strictly to selling him a good article at a steady, reasonable price.

This goes back in part to the question already considered,—how far the purchaser *is* gullible, how far and how long the retailer really is able to deceive him, whether he is to be left to learn for himself, in what way honest dealing is best promoted. Legislation may possibly be devised for the prevention of competition really predatory in character,—competition deliberately designed to mislead the purchaser by offering low prices on one article with the intent to make up a loss through higher prices on others. Similarly it is conceivable that we may enact laws—after the German pattern—against deliberately mendacious advertising. To frame laws on matters of this kind is a most delicate and difficult task; to administer them with effect is even more difficult. Probably we shall

have to content ourselves with the conclusion (or assumption?) that the ordinary purchaser is not endlessly gullible, that the predatory dealer is likely to overreach himself in the end, that honest business pays on the whole; and, on the other hand, must face the certainty that so long as we maintain an industrial order resting on liberty in getting and spending, some remnant of shady dealings will inevitably persist. But all such speculation suggests once more that the remedy for the evils should be taken up by public authority, not put into the hands of the manufacturers and retailers through a system of price prescription. They are after all interested parties, and a system of prescription by interested parties is objectionable.

I have suggested that the regulation of "unfair" competition should be by public authority. It may be further suggested that here is again a topic on which investigation by public authority might clear the situation. *Is* it usually true that the price cutter makes up for the low prices which he parades on the well-known identified articles by higher prices on others? Or does he get the *same* prices (the usual retail prices) on the other goods, and thus give the purchaser a net gain? Is his advertising of cut prices deliberately deceitful? Now on a matter of this sort we are usually told—and I think with truth as well as with sincerity—that on the whole dishonest business and mendacious advertising do not pay. Advertising in general is said to be a means of giving information to the purchaser, not of defrauding him. This is doubtless the case with most advertising of identified goods. It is probably no less true that the advertising by the price cutter conforms to the rule that it is honest business that pays in the long run. On such general grounds it may be maintained that he does not ordinarily outwit or defraud the purchaser; he attracts custom, enlarges his scale of operations, and brings down his overhead charges. But this is a question on which we are much in need of further data. Detailed specific study of retail methods, of costs and prices in different kinds of establishments, would throw light on it. To repeat, our new government agencies—the Federal Trade Commission or the Department of Commerce—might advantageously take it up for systematic inquiry.

It will not be seriously contended, however, that the general attitude of business men is based primarily on their concern for honest retail trading and for the consumer's protection. That concern no doubt is genuine; but it would be an obvious exagger-

ation to describe it as the main force behind the opposition to price cutting. Much more important, in my judgment, is the reluctance to admit a disturbance of familiar and settled arrangements. In this regard the position of the manufacturer must be admitted to be difficult. He is confronted with a condition, and is not unnaturally impatient of theory. The mercantile middlemen—the jobbers and the retail dealers—are at odds among themselves, and their conflicts react on the manufacturer. The great majority of them, both wholesalers and retailers, are at heart opposed to price cutting, and give their support most willingly to the manufacturer who joins with them in endeavoring to prevent it.

The merchants of both classes are disposed to believe that the methods of business to which they have adjusted themselves are good and right, are difficult to improve, and should not be disturbed. They are disposed to believe, too, that their sources of gain are but moderate, and if changed at all should be enlarged rather than diminished. This attitude is not at all singular. Lawyers and judges believe that the law's delays, so irritating to the layman, are essential for the due administration of justice; and they believe that legal fees and expenses are no more than reasonable. Professors resent with indignation any "efficiency inquiries" concerning their working routine; and opinion in academic circles, it need not be said, is unanimous that the pay in this occupation is quite unreasonably low. Similarly the great mass of merchants are united in a consensus of opinion that their existing methods are as well devised as is possible, and that current profits are no more than reasonable. Innovators are believed to be engaged in improper or illegitimate business. For example, the jobbers, and not infrequently manufacurers also, have maintained that the large retail stores and the mail-order houses are not entitled to buy directly from the manufacturers at manufacturers' prices, because these are not jobbers and have no "right" to be treated as jobbers. And similarly the retailer who cuts a price is said to be selling at less than a "fair" price; he cannot possibly do it at a "fair" profit; it is not a legitimate way of doing business. The opposition to price cutting is very largely, if not mainly, opposition to disturbers and innovators.

Now the traditional ways of distributing goods are in a stage of flux and transition. One of the things borne in on us by the business studies and statistical researches of recent years is that the process of getting goods from manufacturer and grower to con-

sumer is extremely costly. The spread between the price received by the prime producer and that paid by the consumer is astonishingly large. Various experiments are on trial for lessening it. Cooperative shopkeeping, heralded in earlier days as a saving means of social salvation, then pooh-poohed for a period as inconsequential, is coming again to be considered with respect as one among possible devices for "lowering the cost of living." Another form of coöperation,—coöperative selling by agricultural producers,—is expected by some careful observers to enable the growers to dispense, at least in some degree, with jobbers and commission merchants. The parcels post,—a blessed boon, whatever errors may have attended its initial stages,—will have larger and larger effects on shopping methods and selling methods. The department store grows apace. The chain store plan has its successes and its possibilities. Mail-order business seems to be in that early phase of an industrial improvement in which the pioneers reap unusual profits. The inquiries made by the Department of Agriculture on the market distribution of some articles of food may point the way to a better organization; and the same is true of the systematic inquiries on retail accounting and retail selling conducted by the Harvard Bureau of Business Research. In every direction are innovations, investigations, and experiments.

What will finally come of all this, it would be rash to predict. The jobber may remain; the country storekeeper is not likely to disappear; retailing on a modest scale has shown a tenacious vitality in face of the attacks of the department store. There is no possibility of saying in advance just what the situation will be a quarter century or half century from now. But the only promising way of getting a more effective distributing process is to let any and every experiment be tried by any one who thinks he can do the thing more cheaply. And this would seem to be a decisive reason against encouraging the fixed-price system. It stands in the way of the experimenter. As regards the spread between producer and consumer, it looks to the maintenance of the *status quo*.

One cannot but feel sympathy for the manufacturer who urges that he is not directly concerned with the profits of retailers or personally disposed to sustain existing ways. The present marketing arrangements have not been made by him; they are simply accepted as they are, and the price determinations are allowed to fit into them. This position, it must be said, is not often taken overtly. The supposed protection of the purchaser against the

"dishonest" or "unfair" retailer bulks more conspicuously in the current arguments for price fixing. But I suspect that frequently the manufacturers say to themselves that after all this is in the main not their affair; it is chiefly a matter of internecine struggle between retailers and jobbers, from which the prime producers simply wish to extricate themselves without damage. The motives which influence men are often obscure to themselves; nor are they to be accused of insincerity if their own version of reasons and motives is not accepted without reservation. At all events, I can imagine that a manufacturer for whom the marketing difficulty is serious should be at bottom indifferent about the price at which the retailer sells his goods, and yet should feel himself compelled to take a hand in regulating it; half conscious all the while that he is bolstering up a system whose general serviceableness is doubtful.

I am bound to say that all the evidence we have indicates that the heavy spread which obtains in market distribution is not likely to be much reduced. Large as it is, it seems to be in the main inevitable. The fraction which the shrewdest and most energetic endeavor can lop off is after all a comparatively small one. The greatest constituent in it is the retailer's spread,—the gap between retailer's buying price and selling price. Under existing habits and traditions it is not probable that any device,—department store or cut-price store or coöperative society,—will cause this to be very much lowered. I say, under existing habits and traditions. If we were willing to change our accustomed free and easy ways, the possibilities of saving would be considerable. Imagine, for example, that every one intending to buy a pair of shoes or a suit of clothes were called on to send notice of his proposed purchase a week or two in advance, to give a preliminary account of the thing wanted, and then to accept an appointment for a stated place and time at which the purchase must be made. It is easy to see how the work of retailing could be systematized, how the selling force could be kept constantly employed, how stocks could be kept to the minimum. As things now stand, we pay heavily for the privilege of freedom in the use of our time, for vacillation and choice, for the maintenance of a stock and a staff adequate for all tastes and all emergencies. It is common to speak of the waste of competition; much of it is in reality the waste necessarily involved in liberty. Almost any shop could make marked savings and reduce its prices considerably by such simple methods as dis-

pensing with delivery and insisting rigidly on cash payment: let the customer pay on the spot and carry his goods home with him. Yet it seems impossible, even in the poorest quarters, for such a shop to hold its own against competitors more expensive but more complaisant. A well organized socialist state could manage all these things much more effectively and economically. But! in any socialist state, however well organized, the individual would have to take those goods which were put on sale, and to take them at such time and place as seemed good to the managers, and in such quarters as they designated, with no opportunity of turning to some one else whose terms and methods might be preferred. One could digress at length on these topics; nor do I wish to commit myself to the conclusion that a more taut and shipshape organization necessarily would mean a net deduction from the sum of human happiness. I only note that the present system, anarchic and ill-adjusted as it may be, does give a freedom of choice which men (and women) seem to prize highly, and that it entails all the expense of that liberty.

For these reasons, further, the matter of price maintenance and price freedom does not seem to me of the first importance. The difference in expense to the public between the fixed-price plan and the price-free plan is probably not considerable. It is entirely true, as the advocates of the former insist, that competition would remain in effect between the various identified and price-maintained articles, and that if one maker of garters (say) should fix his retail price so high as to enable him to reap great profits, a rival would come in with another brand at a lower price even though also fixed. The problem,—to repeat what I said at the outset,—is quite a different one from the trust and monopoly problem. It is essentially that of the method by which market distribution shall be carried out, and of the extent to which we shall enlist competitive freedom for cheapening the methods of distribution. These methods are expensive, and they seem to be inevitably expensive. Yet the circumstance that the process is necessarily dear is no reason why it should be kept just as it is, or why we should stand in the way of endeavors to make it less dear. There is no indication of any revolutionary overturn; perhaps the most far-reaching change in sight is the partial elimination of the jobber. All we can expect is a constant experimenting, a steady nibbling of expenses, a slow and irregular narrowing of the spread. This much is worth while, even though no more magical in its effects than any

other of the devices which would lower at once the cost of living. Half a loaf is better than no bread.

My conclusion is that the case in favor of price maintenance is not made out. There is no public gain from giving an article an outward appurtenance of special merit. There is still less a public gain from compelling retail dealings to be conducted in the good old way and at the good old expense. The price-fixing system would not indeed seem to be so dangerous as to call for penal treatment; it does not portend such large social and economic difficulties as the monopoly and trust. The common-law mode of dealing with contracts in restraint of trade suffices. Treat the arrangements as contracts of this kind, not criminal in their nature and not to be hounded down, but unenforceable in the courts. Let the retailer sell as he sees fit, and continue to trust in the efficacy of competition for cheapening the methods of distribution, and in the good sense of the purchasing public for assuring to them goods of the kind they really want, and at prices which are really advantageous.